

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of Application of Southern
California Edison Company (U338E) for
Approval of Agreements to Sell Its Interests
in Four Corners Generation Station.

A. 10-11-010
(Filed November 15, 2010)

**MOTION TO COMPEL ARIZONA PUBLIC SERVICE TO JOIN THIS PROCEEDING
AS A PARTY**

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Dated: February 28, 2011

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I. INTRODUCTION

Pursuant to the Commission’s Rules of Practice and Procedure (“Rules”) 11-1.1, Sierra Club respectfully requests the Commission to compel Arizona Public Service (“APS”) to join this proceeding as a party. APS is a required party under the Commission’s Rules. Furthermore, Sierra Club would like to conduct discovery of relevant information that is solely in APS’s possession and that is critical to developing the evidentiary record for this proceeding.

II. ARGUMENT

A. Rule 3.6 Requires APS to Join as a Party

The Commission’s Rules require APS not only to sign the application, but to provide “[d]etailed reasons . . . for entering into the proposed transaction, and all facts warranting the same.” Rule 3.6(c). In other words, under Rule 3.6, APS is not only a co-signatory, but a *co-proponent* of the application. As a co-proponent, APS’s reasoning and supporting factual assertions must be subject to discovery and cross-examination. For this reason alone, APS is a necessary and indispensable party to this proceeding.

The Commission's jurisdictional reach is broad. Under the Public Utilities Code, "[t]he commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." Cal. Pub. Util. Code § 701.

The Commission's reach is not limited to California entities. Cal. Pub. Util. Code § 704 (regulating foreign corporations transacting "public utility business" in California.). Also, under its third party subpoena power, the Commission may compel action by entities that reside outside of the State. *See* Cal. Pub. Util. Code § 1794 ("The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within *or without the state* to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state . . . and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts." (Emphasis added)).

B. APS Is Uniquely Positioned to Inform The "Reasonableness" of the Sale Agreement

As the proposed buyer of Southern California Edison's ("Edison") share of the power plant, APS is uniquely positioned to provide vital information about the proposed sale and its terms. APS's participation is particularly important to issue number 3 in the Scoping Memo for this proceeding ("Is divestiture pursuant to the Purchase and Sale Agreement reasonable?"). With respect to this issue, Sierra Club seeks to understand APS's reasoning for entering into the agreement with Edison at the proposed sale price. Sierra Club is particularly interested in understanding how APS valued Edison's recent, current and future investment in the plant in arriving at the proposed sale price.

According to the Scoping Memo, the “reasonableness” of the sale also turns on whether “divestiture is consistent with Senate Bill 1368 mandating a greenhouse gas emissions performance standard (EPS) for certain investments in baseload power plants and Commission decisions establishing and implementing the EPS for [Edison].” Scoping Memo, p. 3. As discussed in Sierra Club’s motion for party status, APS and Edison made certain capital investments in the power plant beginning in 2007. According to Edison, an express purpose of these modifications was to ready the plant for sale. *See* R. 06-04-009, Edison’s (U 338-E) “Amended Petition For Modification,” January 28, 2008, amended, February 13, 2008, p. 3-4. For the purpose of gauging the reasonableness of the sale transaction, Sierra Club is interested in learning more about the value that APS places on Edison’s share of these modifications (in terms of a percentage of the sale price) as well as the environmental impacts of these modifications (for purposes of determining compliance with SB 1368).

C. APS Is Uniquely Positioned to Inform The “Reasonableness” of the 2012 Capital Investments

As to issue number 4 (“Are [Edison’s] proposed 2012 capital expenditures reasonable?”), Sierra Club seeks to learn more about this aspect of the proceeding from both a financial and an environmental perspective. Specifically, given that these investments are planned for 2012 (after the projected effective date of the sale agreement) and will render little to no benefit to California ratepayers, Sierra Club seeks to understand why APS intends to reimburse Edison for those investments instead of simply paying for Edison’s share on the front end. Sierra Club is further interested in understanding the environmental impacts of those investments for purposes of CEQA compliance.

D. APS Is Uniquely Positioned to Inform The CEQA Analysis For the Project

In the Scoping Memo for this proceeding, Commissioner Peevey ruled that this sale proceeding is subject to review under the California Environmental Quality Act (“CEQA”). *See* Scoping Memo, p.2. In fact, Issues 6-11 in the Scoping Memo all relate to CEQA compliance for the project. *See id.*, p. 4. As the current operator of the Four Corners Power Plant, APS is uniquely positioned to provide information that is relevant to the accompanying CEQA review. More specifically, APS possesses emissions data as well as other operational and environmental information that is necessary to fully understand the environmental impacts of past, current and future modifications (including the proposed 2012 capital expenditures) to the facility.

For example, the sale agreement would transfer 24,186 tons/year of sulfur dioxide allowances. APS’s intended use of those allowances is key to understanding the Sale Agreement’s environmental impacts. In response to Sierra Club’s data request to Edison on this issue, Edison’s response was, in part, “[Edison] does not know and through this answer [Edison] does not purport to predict exactly how ‘APS will use those allowances.’ ” Edison’s February 25, 2011 response to Sierra Club’s Data Request Set # 1, Question # 5.b.

Another issue warranting discovery is the potential closure of Units 1-3. The Preliminary Environmental Assessment (“PEA”) for the sale describes the potential shutdown of those units as an “indirect effect” of the sale. *See* PEA at 4-14. Yet, in response to Sierra Club’s data requests asking Edison to describe the environmental impacts of decommissioning Units 1-3, Edison responded as follows: “[T]he shutdown of those units is not within [Edison]’s control or otherwise reasonably predictable by [Edison]. [Edison] has no ownership interest in Units 1-3, which are 100% owned by APS.” Edison’s February 23, 2011 response to Sierra Club’s Data Request Set #1, Question #6. Sierra Club cannot gauge the environmental impacts of the project

without understanding whether the shutdown of these three units is a foreseeable result of the sale. And, according to Edison, only APS can provide an informed response to these data requests.

E. Sierra Club Seeks to Propound Discovery on APS

As detailed above, and in the attached data requests, APS has sole possession of information that is relevant to this proceeding. Sierra Club seeks access to this information, but cannot propound discovery on APS until it becomes a party. Specifically, as the co-proponent of the application in this proceeding, APS should be required to provide evidence that the sale and associated capital investments are reasonable. See Data Requests to APS, Set #1, attached hereto as Exhibit A. Furthermore, Sierra Club seeks access to documents related to the environmental impacts of certain modifications at the facility that are solely in the possession of APS. *Id.* According to Southern California Edison, an express purpose of these modifications was to ready the plant for sale. See R. 06-04-009, Edison's (U 338-E) "Amended Petition For Modification," January 28, 2008, amended, February 13, 2008. p 3-4. As such, evidence related to these modifications is relevant to this proceeding. Finally, full access to environmental impact information for purposes of CEQA compliance necessitates APS's participation.

III. CONCLUSION

In light of the above, Sierra Club respectfully requests the Commission to compel APS to join this proceeding as a party.

Date: February 28, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City of Oakland, County of Alameda; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Earthjustice, 426 17th Street, 5th Floor, Oakland, CA 94612.

On February 28, 2011, I caused to be served a true copy of:

**MOTION TO COMPEL ARIZONA PUBLIC SERVICE TO JOIN THIS PROCEEDING
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By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A. 10-11-010.

By U.S. Mail – by placing it for collection and mailing, in the course of ordinary business practice, enclosed in a sealed envelope, with postage fully prepaid, addressed to all parties of record on the service lists for A. 10-11-010 who do not have an email address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this February 28, 2011 at Oakland, California.

/s/ JESSIE BAIRD
Jessie Baird

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